

## **CHAPTER 4. DEBT DISPOSITION**

### **4-1 Suspension of Collection Activity**

Only the Department of Justice has the authority to compromise, suspend, or terminate collection activity on any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim.

**A. The HUD Claims Officer may suspend collection activity on a debt when:**

1. The debtor cannot be located;
2. The debtor is unable to pay, but the debtor's financial condition is expected to improve; or
3. The debtor has requested a waiver or review of the debt.

**B. Based on the current financial condition of the debtor, the Claims Officer may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:**

1. The applicable statute of limitations has not expired; or
2. Future collection can be effected by administrative offset, notwithstanding the expiration of any applicable statute of limitations for litigation of claims; or
3. The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

**C. Request for Waiver or Administrative Review**

1. The HUD Claims Officer must suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits collecting the debt during that time.
2. If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, the Claims Officer may use discretion, on a case-by-case basis, to suspend collection.
  - a. If, for a given case, HUD is prohibited by statute or regulation from issuing a refund of amounts collected prior to consideration of the debtor's request, the Claims Officer should suspend collection action upon a request for waiver or review.
  - b. However, the Claims Officer should not suspend collection when it is determined that the request for waiver or review is frivolous or was made primarily to delay collection.

- D. When it is learned that a bankruptcy petition has been filed** with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. §§ 362, 1201, and 1301, unless the Claims Officer can clearly establish that the automatic stay has been lifted or is no longer in effect. The Claims Officer should seek legal advice immediately from the Office of the General Counsel and, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by HUD to the debtor until relief from the automatic stay is obtained. (See also Section 2-10.)

#### **4-2 Termination of Collection Activity**

It is the policy of HUD to refer all eligible delinquent debts to Treasury/FMS for cross-servicing at the earliest possible date. Collection may be terminated without referral to cross-servicing, if any of criteria 3 through 6 below are met. In this instance, the case should be closed out as soon as possible.

**A. The HUD Claims Officer may terminate collection activity when:**

1. HUD is unable to collect any substantial amount through its efforts or those of Treasury/FMS, private collection agencies, or the DOJ, as appropriate;
2. The debtor or assets of the debtor cannot be located;
3. Costs of collection are anticipated to exceed the amount recoverable;
4. The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
5. The debt cannot be substantiated; or
6. The debt against the debtor has been discharged in bankruptcy.

**B. Treasury/FMS is responsible for aggressive collection action**, including referral to private collection agencies, referral to the DOJ for litigation, and administrative wage garnishment as appropriate. Thus collection action may be terminated for all debts returned uncollected from Treasury/FMS cross-servicing. Based on Treasury/FMS' Debt Management Services' Cross-Servicing Technical Bulletin Number 09-03, if the debt has been through the Treasury cross-servicing program and returned to HUD by Treasury, collection action may be terminated on debts with a principal balance of \$500,000 or less without prior approval from DOJ.

**C. Before terminating collection activity**, HUD should have pursued all appropriate means of collection, and the Claims Officer has determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude HUD from retaining a record of the account for purposes of:

1. Selling the debt, if HUD determines that such sale is in the best interests of the United States;
2. Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;
3. Offsetting against future income or assets not available at the time of termination of collection activity; or
4. Screening future applicants for prior indebtedness.

**D. Generally, the Claims Officer shall terminate collection activity** on a debt that has been discharged in bankruptcy, regardless of the amount. HUD may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, HUD's claims as a known creditor of a debtor may survive a discharge if HUD did not receive formal notice of the proceedings. The Claims Officer should seek legal advice from the Office of the General Counsel if it is believed that claims or offsets may survive the discharge of a debtor.

**E. Exception to Termination.**

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the HUD Claims Officer may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

#### **4-3 Discharge of Indebtedness**

**A. Basis for Discharge**

A debt is discharged (also referred to as cancelled or as forgiven) when it is closed out without collection in full. When a debt is closed out, HUD has determined that no further active or passive debt collection will be taken. A write-off of the debt and a decision to terminate collection action must occur prior to close out.

**B. Close Out**

When a debt is closed out, all collection actions cease including referral to the Treasury Offset Program (TOP). While payments may be accepted after close out, e.g., to clear credit or a lien problem(s), the debt is no longer reflected in HUD's records as an active or CNC debt/receivable.

**C. Currently Not Collectible (CNC)**

1. If no collection actions will be taken after write-off (see section 4-5 on Write-Off), the case should be closed out. If collection actions will continue

after write-off, the case should not be closed out, but the case should be reclassified as “Currently Not Collectible.” For debts classified as CNC, sufficient financial and non-financial data must be maintained in order to service the account.

2. As a general rule, a debt that is eligible for the Treasury Offset Program (TOP) or that has at least one debtor who has wages that may be garnished using Administrative Wage Garnishment should remain open in a CNC status. Such debts shall remain in a CNC status until (1) the debt is paid, (2) a determination is made that the prospects for future collections are nil, or (3) all collection actions are legally precluded; whichever occurs first.
3. CNC classified debts should be reviewed on a regular basis and closed out when warranted based on the above guidance. Reports should be produced on a quarterly or more frequent basis reflecting cases that have been reclassified as CNC, and for cases that may be eligible for close out based on TOP status, payment history, debtor’s status, debt balance, etc. In addition to initiating close-out action in the course of managing assigned debt portfolios, HUD staff should use these reports to monitor their portfolios.

#### **D. Evaluation and Documentation**

1. All close-out actions must be documented in writing. This documentation should include the basis for the decision with applicable supporting documentation and the signature of the official who made the final decision.
  - a. If DOJ approval is required, a written justification and recommendation should be prepared and sent with appropriate supporting documentation to DOJ for the decision.
  - b. However, based on Treasury/FMS’ Debt Management Services’ Cross-Servicing Technical Bulletin Number 09-03, if the debt has been through the Treasury cross-servicing program and returned to HUD by Treasury, collection action may be terminated on debts with a principal balance of \$500,000 or less without prior approval from DOJ.
2. Close outs and debts reclassified as CNC must be reported to Treasury/FMS on the quarterly Treasury Report on Receivables (TROR) Due from the Public.

#### **4-4 Consequences for Uncollectible Claims**

The consequences to the debtor of not repaying a claim are significant and include several administrative sanctions. These are discussed in the following paragraphs.

**A. Debarment**

HUD may debar the debtor, excluding him/her from participation in HUD programs for a reasonable specified period commensurate with the seriousness of the causes.

**B. Suspension**

HUD's Departmental Enforcement Center may temporarily suspend the debtor from participation in HUD programs because of suspected improper conduct. Normally, suspension may not exceed 12 months; during this period, investigations and administrative and/or legal proceedings take place. On the request of a prosecuting official, suspensions may exceed 12 months but not more than 18 months. The suspended party may request a hearing and may be represented by counsel.

**C. Excluded Parties List System (EPLS)**

1. When a contractor or grantee fails to pay its debt to HUD within a reasonable time, HUD is required by 24 C.F.R. § 17.79 to refer the contractor or grantee to the Office of General Counsel for investigation and possible suspension or debarment pursuant to 2 C.F.R. Part 2424, 2 C.F.R. § 180.800, and 48 C.F.R. subpart 9.4 of the Federal Acquisition Regulation.
2. In the case of matters involving fraud or suspected fraud, the contractor or grantee should be referred to the Office of Inspector General for investigation.
3. Depending on the outcome of the above investigations, HUD shall take measures to assure that the contractor or grantee is placed on the EPLS, a system for excluding certain companies from doing business with the Federal government.

**4-5 Write-off****A. Basis for Write-Off**

Write-off is an accounting transaction that updates HUD's official financial and management reporting records in conformance with applicable federal accounting standards. It results in reporting the debt/receivable as having no value on HUD's financial and management reports.

1. A write-off should be processed when it is determined that a debt/receivable has no value for accounting purposes.
2. A debt that is two years delinquent should be written-off unless special circumstances are present. (See OMB Circular A-129, Section V.5, *Termination of Collection, Write-Off, Use of Currently Not Collectible (CNC), and Close-out.*)

**B. Evaluation and Documentation**

1. Every active, *i.e.*, not closed out, delinquent debt should be evaluated at the end of each calendar quarter. If the debt is more than two years delinquent and not already classified as CNC, then a write-off of the debt should be processed unless future material collections are expected, *e.g.*, the debt is active at Treasury/FMS' cross-servicing program. No additional evaluation, justification, or approval is needed.
2. A write-off may occur before a debt is two years delinquent if an appropriate determination is made to terminate collection action and close out a debt. In this scenario, the write-off will coincide with the close out. The documentation of the evaluation, justification, and approval to terminate collection action and close out the debt (see additional details above) also serves to document the basis for the write-off.
3. Write-offs must be reported to Treasury/FMS on the quarterly TROR Due from the Public.

**4-6 IRS Form 1099C**

- A. All eligible discharged/closed out debts must be reported to the IRS** on Form 1099C by January of the year following discharge of the debt and these amounts must be reported to Treasury/FMS on the Treasury Report on Receivables within the same reporting period that the 1099Cs were actually filed with the IRS.
- B. Each January, all debts that were closed out** during the preceding calendar year should be evaluated to determine if a 1099C report should be issued. The criteria for this task should be based on the written instructions issued by IRS for the applicable tax year. The 1099C data is transmitted to IRS (electronically or on paper) and paper 1099C forms are mailed to the appropriate debtor(s) to their last known address. A report of all 1099Cs issued should be produced to monitor this process and to aid in responding to debtor inquiries.